

Small Business Administration

§ 120.829

(3) Direct the operation of a program to review and assess the CDC's 504-related loans. For the 504 review program, the internal control policies must specify the following:

(i) Loan, loan-related collateral, and appraisal review standards, including standards for scope of selection (for review of any such loan, loan-related collateral or appraisal) and standards for work papers and supporting documentation;

(ii) Loan quality classification standards consistent with the standardized classification systems used by the Federal Financial Institution Regulators;

(iii) Specific control requirements for the CDC's oversight of Lender Service Providers; and

(iv) Standards for training to implement the loan review program; and

(4) Address other control requirements as may be established by SBA.

(c) *Annual Audited/Reviewed Financial Statements.* Each CDC with a 504 loan portfolio balance of \$20 million or more (as calculated by SBA) must have its financial statements audited annually by a certified public accountant that is independent and experienced in auditing financial institutions. The audit must be performed in accordance with generally accepted auditing standards as adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA). The auditor must be independent, as defined by the AICPA, of the CDC. Annually, the auditor must issue an opinion as to the fairness of the CDC's financial statements and their compliance with GAAP. For CDCs with a 504 portfolio balance of less than \$20 million (as calculated by SBA), the CDC's annual financial statements submitted to SBA must be reviewed by an independent CPA in accordance with GAAP.

(d) *Auditor qualifications.* The audit or review must be conducted by an independent certified public accountant who:

(1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the CDC's principal office is located;

(2) Agrees in the engagement letter with the CDC to provide the SBA with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3)(i) Is in compliance with the AICPA Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff;

(4) Has received a peer review or is enrolled in a peer review program that meets AICPA guidelines; and

(5) Is otherwise acceptable to SBA.

[73 FR 75518, Dec. 11, 2008]

§ 120.827 Other services a CDC may provide to small businesses.

A CDC may provide a small business with assistance unrelated to the 504 loan program as long as the CDC does not make such assistance a condition of the CDC accepting from that small business an application for a 504 loan. An example of other services a CDC may provide is assisting a small business in applying for a 7(a) loan (as described in §120.2). A CDC is subject to part 103 of this chapter when providing such assistance.

[68 FR 57981, Oct. 7, 2003]

§ 120.828 Minimum level of 504 loan activity and restrictions on portfolio concentrations.

(a) A CDC is required to receive SBA approval of at least four 504 loan approvals during two consecutive fiscal years.

(b) A CDC's 504 loan portfolio must be diversified by business sector.

[68 FR 57981, Oct. 7, 2003]

§ 120.829 Job Opportunity average a CDC must maintain.

(a) A CDC's portfolio must maintain a minimum average of one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a FEDERAL REGISTER notice. Such Job Opportunity average remains in effect until changed by subsequent FEDERAL REGISTER publication. A CDC is permitted two years from its certification date to meet this average.

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(b) A CDC must indicate in its annual report the Job Opportunities actually or estimated to be provided by each Project.

(c) If a CDC does not maintain the required average, it may retain its certification if it justifies to SBA's satisfaction its failure to do so in its annual report and shows how it intends to attain the required average.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 57981, Oct. 7, 2003]

§ 120.830 Reports a CDC must submit.

A CDC must submit the following reports to SBA:

(a) An annual report within one hundred-eighty days after the end of the CDC's fiscal year (to include audited or reviewed financial statements of the CDC, as applicable, and any affiliates or subsidiaries of the CDC prepared in accordance with §120.826(c) and (d)), and such interim reports as SBA may require.

(1) The audited financial statements must, at a minimum, include the following:

- (i) Audited balance sheet;
- (ii) Audited statement of income (or receipts) and expense;
- (iii) Audited statement of source and application of funds;
- (iv) Such footnotes as are necessary to an understanding of the financial statements;
- (v) Auditor's letter to management on internal control weaknesses; and
- (vi) The auditor's report.

(2) The reviewed financial statements must, at a minimum, include the following:

- (i) Balance sheet;
- (ii) Statement of income (or receipts) and expense;
- (iii) Statement of source and application of funds;
- (iv) Such footnotes as are necessary to an understanding of the financial statements; and
- (v) The accountant's review report.

(b) For each new associate and staff, a Statement of Personal History (for use by non-bank lenders and CDCs) and other information required by SBA;

(c) Reports of involvement in any legal proceeding;

(d) Changes in organizational status;

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(e) Changes in any condition that affects its eligibility to continue to participate in the 504 program; and

(f) Quarterly service reports on each loan in its portfolio which is 60 days or more past due (and interim reports upon request by SBA).

(g) Other reports as required by SBA.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 57981, Oct. 7, 2003; 73 FR 75518, Dec. 11, 2008]

EXTENDING A CDC'S AREA OF OPERATIONS

§ 120.835 Application to expand an Area of Operations.

(a) *General.* A CDC that has been certified to participate in the 504 program may apply to expand its Area of Operations if it meets all requirements to be an Accredited Lender Program (ALP) CDC, as set forth in §120.840(c), and demonstrates that it can competently fulfill its 504 program responsibilities in the proposed area.

(b) *Local Economic Area Expansion.* A CDC seeking to expand its Area of Operations into a Local Economic Area must apply in writing to the Lead SBA Office.

(c) *Multi-State CDC Expansion.* A CDC seeking to become a Multi-State CDC must apply to the SBA District Office that services the area within each State where the CDC intends to locate its principal office for that State. A CDC may apply to be a Multi-State CDC only if:

(1) The State the CDC seeks to expand into is contiguous to the State of the CDC's incorporation;

(2) The CDC demonstrates that its membership meets the requirements in §120.822 separately for its State of incorporation and for each additional State in which it seeks to operate as a Multi-State CDC; and

(3) The CDC has a loan committee meeting the requirements of §120.823.

[68 FR 57981, Oct. 7, 2003]

§ 120.837 SBA decision on application for a new CDC or for an existing CDC to expand Area of Operations.

The processing District Office must solicit the comments of any other District Office in which the CDC operates or proposes to operate. The processing